

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

IN THE MATTER OF A CLAIM UNDER THE
HUMAN RIGHTS ACT 1993 AND ITS AMENDMENTS

BETWEEN

**CHILD POVERTY ACTION GROUP
INCORPORATED**, an incorporated society,
registration number 921414, having its registered
office at 95 Market Road, Epsom, Auckland

First Plaintiff

AND

**CHILD POVERTY ACTION GROUP
INCORPORATED**, an incorporated society,
registration number 921414, having its registered
office at 95 Market Road, Epsom, Auckland, acting
on behalf of Ms AB of Auckland and Ms CD of
Christchurch

Second Plaintiff

AND

THE ATTORNEY-GENERAL

Defendant

AMENDED STATEMENT OF CLAIM

DATED OCTOBER 2006

TAKE NOTICE THAT the Plaintiffs allege that:

- (1) **Section KD 2AAA(1)(e) of the Income Tax Act 2004 (ITA04)** which excludes principal caregivers of financially dependent children who receive (and/or where relevant whose spouse, civil union partner or de facto partner receives) an income-tested benefit, from eligibility for payment of an **In-work Payment (IWP)**; and
- (2) **Section KD 2AAA(8)(a) of the ITA04** which, despite section KD 2AAA(1)(d), excludes principal caregivers of dependent children who receive (and/or where

relevant whose spouse, civil union partner or de facto partner receives) compensation payable under the Injury Prevention, Rehabilitation and Compensation Act 2001 (ACCA) where they also did not receive payment of a **Child Tax Credit (CTC)** (the predecessor of the IWP) for an eligible period ending 31 March 2006 by virtue of receiving (and/or where relevant whose spouse, civil union partner or de facto partner received) for a relevant time a “specified payment” which included compensation payable under the ACCA, from eligibility for payment of an IWP;

contravene the following provisions of the Human Rights Act 1993 (the Act):

Section 20L which provides that an act or omission (including an enactment) is in breach of Part 1A of the Act if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 (the NZBORA), in that it limits the right to freedom from discrimination affirmed by that section and it is not, under section 5 of the NZBORA, a justified limitation on that right.

Section 21(1)(k)(ii) which provides that **employment status**, namely being a recipient of a benefit under the Social Security Act 1964 (SSA) (which includes income-tested benefits) or an entitlement under the ACCA (which includes weekly compensation), is a prohibited ground of discrimination for the purposes of the Act.

Section 21(2)(b)(i) which provides that a prohibited ground of discrimination provided in section 21(1) is a prohibited ground of discrimination, for the purposes of the Act, if it has in the past existed.

Section 21(2)(a) which provides that a prohibited ground of discrimination provided in section 21(1) is a prohibited ground of discrimination, for the purposes of the Act, if it pertains either to a person or to a relative or associate of a person.

Pursuant to section 21(2)(a) this proceeding is brought by the Plaintiffs in the interests of approximately 230,000 children whose relatives or associates, namely the principal caregivers of those children, are ineligible to receive payment of an IWP for the support of their children by virtue of section KD 2AAA(1)(e).

Further, pursuant to section 21(2)(a) this proceeding is also brought by the Plaintiffs in the interests of children whose relatives or associates, namely the principal caregivers of those children, are ineligible to receive the IWP for the support of their children by virtue of section KD 2AAA(8)(a). Information concerning the numbers of affected children in this category does not appear to be available.

In particular the Plaintiffs are concerned about the children in families who are ineligible for the CTC or IWP who are also amongst the approximately 26% of New Zealand children whose living standards have recently been assessed by the government as being characterised by severe or significant hardship.

The Plaintiffs have complained to the Human Rights Commission (the Commission) but their complaints have not been resolved.

The Plaintiffs will be represented in this case by the Office of Human Rights Proceedings.

The facts upon which the Plaintiffs are bringing this claim to establish a contravention of the Act are as follows:

Introduction to substantive claim: the parties

- 1 The First Plaintiff is a non-profit group which was formed in 1994 to advocate for more informed social policy to support children in Aotearoa New Zealand, in particular those living in poverty. The Plaintiff was incorporated in 1998 under the Incorporated Societies Act 1908. Its objects include: to promote awareness of the causes and consequences of child poverty and to promote better policies for children and young people with the primary focus on the right of every child and young person to security, food, shelter, education and healthcare and opportunities for development.
- 2 The Second Plaintiff is the First Plaintiff acting on behalf of two affected persons Ms AB and Ms CD, who are in receipt of a domestic purposes benefit under the SSA and weekly compensation under the ACCA, respectively. Because of their employment status they were both previously ineligible to receive the CTC, and are currently ineligible to receive the IWP, to assist with the upbringing of their respective children.
- 3 Ms AB and Ms CD have agreed to being identified as affected persons, and for the First Plaintiff to act on their behalf, collectively as the Second Plaintiff, specifically to prevent further delays in dealing with the substantive issues in this proceeding before the Tribunal while a jurisdictional point concerning the ability of the First Plaintiff to bring proceedings under the Act is dealt with in the higher courts.
- 4 However, the focus of this claim is upon the systemic effect of excluding a large group of generally vulnerable families, including in effect their children, from eligibility for payment of the IWP which despite its title is a payment clearly aimed primarily at assisting with the care of children. In this regard Ms AB and Ms CD are merely examples of this large group of affected persons who as a group suffer various types and degrees of disadvantage.
- 5 Further, while a key concern of the Plaintiffs is affected families with children living in poverty, and while Ms AB and Ms CD are disadvantaged by not having been eligible in the past to receive the CTC or not currently being eligible to receive the IWP because of their employment status, neither Ms AB nor Ms CD claim that they or their children are living in poverty nor do they claim that they or their children are living in severe or significant hardship.

Introduction to substantive claim: the legislation

- 6 In 1996 a tax credit called the Independent Family Tax Credit (IFTC) was provided for in section KD 2(3) of the Income Tax Act 1994. The IFTC was renamed the CTC and continued to be provided for in section KD 2(4) of the ITA04.
- 7 The CTC was largely replaced by the IWP from 1 April 2006 and is provided for in section KD 2AAA of the ITA04 which was enacted in the Taxation (Working for Families Act) 2004.
- 8 The focus of this proceeding is upon the IWP, although the CTC remains relevant for several purposes. First it is directly relevant for what appears to be a comparatively small number of persons who pursuant to section KD 2AAAB of the ITA04 continue to receive the CTC because they are ineligible to receive the IWP. It is also relevant because one of the reasons Ms CD is not eligible to receive the IWP is because she was previously ineligible, because of her employment status, to receive the CTC.
- 9 In substance the IFTC, the CTC and the IWP are the same, in particular in that they were/are:
- 9.1 tax credits payable to the principal caregivers of dependent children;
 - 9.2 paid in varying amounts depending on the level of family income and the number of dependent children;
 - 9.3 not payable to families who receive(d) income by way of income-tested benefits or compensation under the ACCA.
- 10 Payment is made to principal caregivers who are themselves in paid employment or have a spouse or partner in paid employment. Despite a link with paid employment in terms of eligibility and despite the new term: “In-work Payment” there is no requirement that the principal caregiver themselves be in paid employment if they have a spouse or partner who is in paid employment.
- 11 One key difference between the CTC and IWP is that the latter is payable at a significantly higher rate than the former was, both in terms of rates of payment, as well as income levels which are eligible for payment.
- 12 For example, in terms of rates of payment: according to information obtained from the Inland Revenue Department’s website for the 2005/2006 year the minimum CTC payable for families with one child (earning an income before tax of \$34,500), per fortnight, was **\$30**. In comparison according to information obtained from the Inland Revenue Department’s website for the 2006/2007 year the minimum IWP payable for families with one child (earning an income before tax of \$53,000), is **\$120** per fortnight.

- 13 For example, in terms of income levels eligible for payment of these two tax credits: according to information obtained from the Inland Revenue Department's website for the 2005/2006 year a family with three dependent children was entitled to a CTC of \$90 per fortnight up to a family income before tax of **\$51,000**. In comparison, according to information obtained from the Inland Revenue Department's website for the 2006/2007 year a family with three children is entitled to an IWP of over \$100 per fortnight up to an family income before tax of **\$80,000**.

Child Tax Credit and In-Work Payment as components of the Subpart KD Credit

- 14 The CTC and IWP are currently payable as alternative components of a credit of tax known as the Subpart KD Credit which is provided for in section KD 2 ITA04. The formula for calculating entitlement to the Subpart KD Credit is provided for in section KD 2(2). (Note that the provisions referred to are set out in full in the Appendix.)
- 15 Section KD 2 provides (note the key parts of this provision relevant to these proceedings are in bold text):

KD 2 Calculation of subpart KD credit

(1) A person is allowed a credit of tax (known as the subpart KD credit) for a tax year containing an eligible period of an amount calculated under the formula in subsection (2), subject to section KD 7A.

(2) The formula is—

$$\text{FSC} + \text{IWP or CTC} + \text{PTC} - \text{FCA}$$

where—

FSC is the amount of the family support credit for the eligible period calculated under subsection (3)

IWP or CTC is the amount of-

(a) **the in-work payment for the eligible period calculated under section KD 2AAA, if the person is entitled to the in-work payment for the eligible period:**

(b) **the child tax credit for the eligible period calculated under subsection (4), if the person-**

(i) **is not entitled to the in-work payment for the eligible period; and**

(ii) **is entitled to the child tax credit for the eligible period under section KD 2AAAB**

PTC is the amount of the parental tax credit for the eligible period calculated under subsection (5)

FCA is the amount of the family credit abatement for the eligible period calculated under subsection (6).

- 16 Prior to 1 April 2006 section KD(2) provided (note the key parts of this historical provision relevant to these proceedings are in bold text):

KD 2 Calculation of subpart KD credit

.....

(2) *The formula is-*

*FSC + **CTC** + PTC - FCA*

where—

FSC is the amount of the family support credit for the eligible period calculated under subsection (3)

CTC is the amount of the child tax credit for the eligible period calculated under subsection (4)

PTC is the amount of the parental tax credit for the eligible period calculated under subsection (5)

FCA is the amount of the family credit abatement for the eligible period calculated under subsection (6).

- 17 A comparison of the current and historical texts indicates that the IWP largely replaced the CTC although they both remain payable as alternatives. The eligibility criteria for both the CTC and the IWP are detailed below.
- 18 Section KD 2AAAB ITA04 provides for persons who were entitled to receive the CTC but are not entitled to receive the IWP to continue receiving the CTC. It is not known how many families are affected by this provision.
- 19 Two other tax credits which are also components of the Subpart KD Credit and which are not directly relevant to this proceeding are the Family Support Credit and the Parental Tax Credit. Family Support payments are paid to families who are ineligible to receive the IWP (and were also available to those ineligible to receive the CTC).
- 20 The Family Credit Abatement (FCA) is a means of restricting eligibility for payment of a Subpart KD Credit to those earning below certain maximum levels of income. The FCA is subtracted from the total of what would otherwise be payable following calculation of entitlement to each of the FSC, CTC or IWP, and the PTC.

Child Tax Credit

- 21 Eligibility for payment of the apparently now largely redundant CTC, including the formula for calculating entitlement, is provided in section KD 2(4) ITA04.
- 22 Section KD 2(4) provides (the key part of this provision relevant to these proceedings is in bold text):

KD 2 Calculation of subpart KD credit

.....

(4) The amount of the child tax credit for an eligible period is calculated using the formula:

$$\$780 \times \text{dependent children} \times \frac{\text{eligible period}}{365}$$

where—

dependent children is the number of dependent children for whom the person is a **principal caregiver** during the eligible period

eligible period is the number of days in the eligible period for which **the person and their spouse, civil union partner, or de facto partner do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.**

23 Section KD 2(4) specifically excludes from eligibility for the CTC families who receive a “specified payment”.

24 A “specified payment” is defined in section OB 1 of the ITA04 as including:

24.1 An income-tested benefit, which is defined in section 3 of the SSA as including an unemployment benefit, a sickness benefit, a domestic purposes benefit, an emergency benefit, an invalid’s benefit, New Zealand superannuation and a widow’s benefit; and

24.2 Compensation described in any of paragraph (b)(xii) to (xvi) of the definition of “salary or wages” in section OB 1 of the ITA04 which details various forms of compensation payable under the ACCA including weekly compensation.

(Note that the provisions referred to are set out in full in the Appendix.)

25 Families who received income from the sources detailed in paragraphs 24.1 and 24.2 above were previously excluded from eligibility for payment of the CTC. This includes the families headed by the two persons named (collectively with the First Plaintiff) as the Second Plaintiff.

In-work Payment

26 Apart from those who continue to receive the CTC pursuant to section KD 2AAAB the CTC has now been largely replaced by the IWP.

27 Eligibility for payment of the IWP including the formula for calculating entitlement is provided for in section KD 2AAA ITA04. This provision was inserted into the ITA04 by section 14(1) of the Taxation (Working for Families) Act 2004 and came into force on 1 April 2006. The key relevant parts of this provision to the present proceeding are **section KD 2AAA(1)(e)** and **section KD 2AAA(8)(a)**.

(Note that the provisions referred to are set out in full in the attached Appendix.)

28 Section KD 2AAA(1)(e) provides:

KD 2AAA IN-WORK PAYMENT—

(1)

(e) **neither the principal caregiver nor the principal caregiver's spouse, civil union partner, or de facto partner receives an income-tested benefit**

29 Therefore section KD 2AAA(1)(e) on its face excludes from eligibility for receipt of the IWP families who receive income-tested benefits.

30 Ms AB is in this category of persons as she is in receipt of a domestic purposes benefit and is therefore ineligible to receive an IWP.

31 Section KD 2AAA(1)(d) provides that families receiving certain types of income including payment of compensation under the ACCA are eligible to receive the IWP. However KD 2AAA(1)(d) is qualified by section KD 2AAA(8)(a) which provides:

(8) **A person is treated as satisfying subsection (1)(d) if—**

(a) **the person is receiving a child tax credit for an eligible period ending on 31 March 2006;**

32 This has the effect of excluding families who receive compensation under the ACCA and who were also ineligible to receive payment of a CTC for an eligible period ending on 31 March 2006 because of the receipt for a relevant time of such compensation.

33 Ms CD is in this category of persons and is therefore ineligible to receive an IWP.

CTC and IWP payable to principal caregivers

34 A key criterion for eligibility for the CTC or the IWP is being the principal caregiver of dependent children (for the CTC) or financially dependent children (for the IWP).

35 A “principal caregiver” is defined in section OB 1 ITA04 as:

principal caregiver, for a dependent child,—

(a) means the person, whether or not a parent of the child, who, in the opinion of the Commissioner, has the primary responsibility for the day to day care of the child, other than on a temporary basis; and

(ab) does not include a transitional resident or the spouse, civil union partner, or de facto partner of a transitional resident; and

- (b) does not include a body of persons, whether incorporated or unincorporated; and
- (c) does not include a person who is the proprietor of, or employed in,—
 - (i) a residence established under the Children, Young Persons, and Their Families Act 1989; or
 - (ii) a residential disability care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001; or
 - (iii) any other institution in which the child is being cared for

36 Despite the title “In-work Payment” there is no requirement that the principal caregiver themselves be in paid employment in order to receive the IWP.

Discrimination

37 The Plaintiffs say that **section KD 2AAA(1)(e)** and **section KD 2AAA(1)(8)(a)** are both inconsistent with section 19 of the NZBORA and thus in breach of Part 1A of the Act pursuant to section 20L of the Act.

38 The United Nations Human Rights Committee (General Comment 18, 1989) defined discrimination for the purpose of the International Covenant on Civil and Political Rights as meaning any distinction, or exclusion, or restriction, or preference, arising from a prohibited ground of discrimination and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. Both the Act and the NZBORA were enacted to recognise and affirm New Zealand’s international obligations under this Covenant.

Distinction or exclusion or restriction or preference arising from a prohibited ground of discrimination

39 The first limb of the Committee’s definition requires a distinction be made, or an exclusion, or restriction, or preference operate in respect of a person or a group arising from a prohibited ground of discrimination.

40 As set out above **section KD 2AAA(1)(e)** and **section KD 2AAA(1)(8)(a) ITA04** both make a distinction in respect of, or exclude or restrict from, eligibility for payment of an IWP, persons who receive income by way of income-tested benefits or compensation under the ACCA where in respect of the latter they were also previously ineligible to receive payment of a CTC.

41 Thereby those provisions operate to give a corresponding preference to families who receive income from other sources, which includes from employment (refer section KD 2AAA(1)(d) and the definition of “full-time earner” in section OB 1 of the ITA04 – set out in full in the Appendix).

- 42 The relevant prohibited ground of discrimination in this proceeding is **employment status** pursuant to section 21(1)(k) of the Act, namely being in receipt of a benefit under the SSA (which includes income-tested benefits) or an entitlement under the ACCA (which includes weekly compensation). In respect of the latter section 21(2)(b)(i) of the Act applies because those currently in receipt of compensation under the ACCA are ineligible to receive the IWP if they were also ineligible in the past to receive a CTC because of their employment status, namely being in receipt of compensation under the ACCA for a relevant time.
- 43 A substantive and operative point of differentiation (or distinction or exclusion or restriction) for additional family assistance by way of the IWP and which is specifically for the support of children is not income level or need; but rather employment status as this is defined in the Act.

Disadvantage

- 44 Distinctions, or exclusions, or restrictions, or corresponding preferences arising from a prohibited ground of discrimination do not in themselves amount to discrimination. The second limb of the definition of discrimination provided by the United Nations Human Rights Committee (General Comment 18, 1989) provides that discrimination also requires that these have: the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. There needs therefore to be some disadvantage (in general terms) which results from the differentiation between the complainant group and others.
- 45 Families who are not entitled to receive payment of an IWP by reason of the employment status of the principal caregiver, or where relevant the principal caregiver's spouse, civil union partner or de facto partner, are disadvantaged in terms of their household income by the amounts which would otherwise be payable to them in each case for the support of their children on the basis of the family's income level.
- 46 The Plaintiffs say that the children in these families also suffer this disadvantage or the consequences of this disadvantage.
- 47 Families recently assessed by the government as having, in 2004, low living standards (defined as involving either severe hardship, significant hardship or some hardship) included 51% of families whose main source of income was income-tested benefits compared with 17% of families whose main source of income was market income (Ministry of Social Development *2006 the social report te purongo oranga tangata 2006*).
- 48 The persistence and severity of poverty for children in New Zealand whose families receive benefits has been highlighted by the Ministry of Social Development (*Children in Poor Families: Does the Source of Family Income Change the Picture 2002*).

- 49 The children in poor families primarily reliant upon government transfers are a particularly vulnerable group (Ministry of Social Development *Children in Poor Families: Does the Source of Family Income Change the Picture* 2002).
- 50 These children have lower living standards and have a greater risk of negative outcomes (Ministry of Social Development *Children in Poor Families: Does the Source of Family Income Change the Picture* 2002).
- 51 The exclusion of these families from access to the IWP contributes to and/or exacerbates the adverse consequences suffered by these generally vulnerable children in such families across a range of social indicators. These will be further particularised in the statements of evidence to be filed by the Plaintiffs including by way of evidence from expert witnesses.

Children in ineligible families also suffer discrimination

- 52 Pursuant to section 21(2)(a) of the Act the provisions of the ITA04 at issue discriminate against approximately 230,000 children because the principal caregivers of those children are ineligible to receive the IWP because either or both they or (where relevant) their spouse, civil union partner or de facto partner, all being relatives or associates of those children, receive income by way of income-tested benefits under the SSA.
- 53 Also pursuant to section 21(2)(a) these provisions discriminate against children whose principal caregivers are ineligible to receive the IWP because either or both they or (where relevant) their spouse, civil union partner or de facto partner, all being relatives or associates of those children, receive income by way of compensation under the ACCA and were also ineligible to receive the CTC for an eligible period in the year ending 31 March 2006 because they were at a relevant time in receipt of compensation under the ACCA. (Information concerning the numbers of children who may be affected in this manner does not appear to be available.)

Justification

- 54 The Plaintiffs note that a defence is available to the Defendant, in that there is no breach of Part 1A of the Act if, even though the legislative provisions which are the subject of this proceeding are found to limit the right to be free from discrimination affirmed in section 19 of the New Zealand Bill of Rights Act 1990, they are under section 5 of that Act a justified limitation on that right.
- 55 The Plaintiffs also note that one point relevant to this defence is that some of the families who are excluded from receiving the IWP, including families living in hardship (as defined by the government in the report referred to in paragraph 47 above), have (and/or have had in the past) little or no choice but to rely upon income sourced by way of income-tested benefits or compensation under the ACCA for reasons including sickness, injury resulting

in incapacity to be employed either full or part time, caring for young or disabled children, redundancy, lack of jobs, and unsuitable child care.

- 56 The Plaintiffs also note that the onus of proving that any limit on the right to be free from discrimination is a justified limitation on that right lies with the Defendant pursuant to section 92F(1) of the Act.

AND TAKE FURTHER NOTICE THAT at a date and time to be fixed by the Chairperson of the Human Rights Review Tribunal the Plaintiffs will ask the Tribunal to make the following orders:

- 1 **A DECLARATION** pursuant to section 92J(2) of the Act that section KD 2AAA(1)(e) and section KD 2AAA(8)(a) of the Income Tax Act 2004 are inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.

Catherine Rodgers
Assistant Director of Human Rights Proceedings
Kaiawhina Tumuaki Whakatau Take Tika Tangata

This Statement of Claim is filed on behalf of the above named Plaintiffs by Catherine Anne Rodgers whose address for service is at the offices of the Office of Human Rights Proceedings, Level 8, Vogel Building, 8 Aitken Street, Thorndon, Wellington.

Documents for service on the above named Plaintiffs may be left at the address for service or may be:

- (1) posted to PO Box 12411, Thorndon, Wellington; or
- (2) transmitted by facsimile to (04) 499-5998 or emailed to catheriner@ohrp.org.nz provided the original documents are then posted to the above address.

APPENDIX: RELEVANT STATUTORY PROVISIONS

1 Income Tax Act 2004

KD 2 CALCULATION OF SUBPART KD CREDIT [NB this historical text was repealed and replaced by the text below from 1 April 2006]

.....

(2) *The formula is-*

$$FSC + CTC + PTC - FCA$$

where—

FSC *is the amount of the family support credit for the eligible period calculated under subsection (3)*

CTC *is the amount of the child tax credit for the eligible period calculated under subsection (4)*

PTC *is the amount of the parental tax credit for the eligible period calculated under subsection (5)*

FCA *is the amount of the family credit abatement for the eligible period calculated under subsection (6).*

KD 2 CALCULATION OF SUBPART KD CREDIT

(1) A person is allowed a credit of tax (known as the subpart KD credit) for a tax year containing an eligible period of an amount calculated under the formula in subsection (2), subject to section KD 7A.

(2) The formula is—

$$FSC + \mathbf{IWP \text{ or } CTC} + PTC - FCA$$

where—

FSC *is the amount of the family support credit for the eligible period calculated under subsection (3)*

IWP or CTC is the amount of-

(a) **the in-work payment for the eligible period calculated under section KD 2AAA, if the person is entitled to the in-work payment for the eligible period:**

(b) **the child tax credit for the eligible period calculated under subsection (4), if the person-**

(i) **is not entitled to the in-work payment for the eligible period; and**

(ii) **is entitled to the child tax credit for the eligible period under section KD 2AAAB**

PTC is the amount of the parental tax credit for the eligible period calculated under subsection (5)

FCA is the amount of the family credit abatement for the eligible period calculated under subsection (6).

(4) The amount of the child tax credit for an eligible period is calculated using the formula-

$$\$780 \times \text{dependent children} \times \frac{\text{eligible period}}{365}$$

where—

dependent children is the number of dependent children for whom the person is a **principal caregiver** during the eligible period

eligible period is the number of days in the eligible period for which **the person and their spouse, civil union partner, or de facto partner do not receive a specified payment and do not have a suspended entitlement to an income-tested benefit.**

.....

KD 2AAA IN-WORK PAYMENT

(1) A **principal caregiver** is entitled to the in-work payment for an eligible period in relation to a child if, for the eligible period,—

- (a) the principal caregiver is aged 16 years or over; and
- (b) the principal caregiver cares for the child—
 - (i) whose care is primarily the responsibility of the principal caregiver; and
 - (ii) who is being maintained as a member of the principal caregiver's family; and
 - (iii) who is financially dependent on the principal caregiver and includes a child for whom payments are made under section 363 of the Children, Young Persons, and Their Families Act 1989 or a child for whom a benefit is paid under section 28 or 29 of the Social Security Act 1964; and
- (c) either the principal caregiver satisfies the residence requirements of subsection (3) or the child satisfies the residence requirements of subsection (4); and
- (d) either or both of the principal caregiver and the principal caregiver's spouse, civil union partner, or de facto partner is a person to whom subsection (7) refers, or—
 - (i) has, from an activity, income that satisfies the requirements of subsection (5) for 1 or more periods of a week in the eligible period, subject to subsection (6) or (7) or paragraphs (c), (d), (e), (f), or (g) of the definition “full-time earner”; and

- (ii) is a full-time earner, or would normally be a full-time earner, engaged in employment if the income referred to in subparagraph (i) were treated as satisfying the requirements of paragraph (d) of the definition of “employment”; and
- (e) **neither the principal caregiver nor the principal caregiver's spouse, civil union partner, or de facto partner receives an income-tested benefit**, or a payment of the kind described in paragraph (xi) of the definition of “salary or wages”, or a parent's allowance under section 32(2) of the War Pensions Act 1954.
- (2) The amount of the in-work payment for a principal caregiver for an eligible period is calculated using the formula:
- $$(\text{amount A} + (\text{amount B}) \times (\text{children} - 3)) \times \frac{\text{weeks}}{52}$$
- where—
- amount A is \$3,120 or such greater amount as may be prescribed by the Governor-General by Order in Council under section KD 5C
- amount B is \$780 or such greater amount as may be prescribed by the Governor-General by Order in Council under section KD 5C
- weeks is the number of 1 week periods in the eligible period for which the principal caregiver or the principal caregiver's spouse, civil union partner, or de facto partner has, from the activity, income to which subsection (1)(d)(i) and (ii) refers
- children is the greater of—
- (a) 3:
- (b) the number of children in relation to whom the principal caregiver is entitled to the in-work payment.
- (3) A principal caregiver satisfies subsection (1)(c) if—
- (a) the principal caregiver has been both resident and pre-sent in New Zealand for a continuous period of 12 months at any time; and
- (b) on the date on which a credit of tax is claimed under section KD 2, the principal caregiver is a tax resident and resident in New Zealand.
- (4) A child satisfies subsection (1)(c) if the child is both resident and present in New Zealand for the eligible period.
- (5) Income from an activity satisfies this subsection if the income is—
- (a) a source deduction payment that is not—
- (i) described in paragraph (b)(v), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), and (xvi) of the definition of “salary or wages”:
- (ii) a withholding payment of the kind specified in Part E of the Schedule of the Income Tax (Withholding Payments) Regulations 1979:
- (b) income to which section OB 2(2) applies:

(c) income from a business carried on for profit.

(6) A person who satisfies the requirements of subsection (1)(d)(ii) but who in a 1 week period is not engaged in an activity related to their employment and who is on leave from that employment because of the birth of a child and who is eligible to receive the parental tax credit in respect of the child is treated for the purpose of subsection (1)(d)(ii), and for the period for which the parental tax credit is paid to the person, as being engaged in the week in the activity for the number of hours in respect of which the Commissioner is satisfied that the person would have been engaged but for the birth of the child.

(7) A person who satisfies the requirements of subsection (1)(d)(ii) but who in a 1 week period is engaged in employment for less than the number of hours required to satisfy subsection (1)(d)(ii) because of the birth of a child and who is eligible to receive the parental tax credit in respect of the child is treated for the purpose of subsection (1)(d)(ii), and for the period for which the parental tax credit is paid to the person, as being engaged in the week in the activity for the number of hours in respect of which the Commissioner is satisfied that the person would have been engaged but for the birth of the child.

(8) A person is treated as satisfying subsection (1)(d) if—

- (a) the person is receiving a child tax credit for an eligible period ending on 31 March 2006; and**
- (b) the person or the person's spouse, on or after 1 January 2006, suffered an incapacity due to personal injury by accident within the meaning of section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001; and
- (c) weekly compensation within the meaning of section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, is being paid in respect of the incapacity or will be paid in respect of the incapacity; and
- (d) the person or their spouse, civil union partner, or de facto partner would have satisfied the requirements of subsection (1)(d)(i) and (ii) and been eligible for the credit of tax calculated under this section at the time of the incapacity if this section had come into force before the date of the incapacity.

KD 2AAAB CONTINUATION OF CHILD TAX CREDIT PAYMENTS

A person is entitled to continue to receive a child tax credit calculated under section KD 2(4) for an eligible period if-

- (a) the person is eligible for a child tax credit in relation to a child for an eligible period ending on 31 March 2006; and
- (b) the person is not eligible for an in-work payment under section KD 2AAA; and
- (c) the person continues to be eligible for a child tax credit in relation to a child at all times after 31 March 2006.

OB 1 DEFINITIONS

full-time earner—

- (a) means a person who, for any week,—

- (i) is engaged in employment for not less than 20 hours in the week and does not have a spouse, civil union partner, or de facto partner at any time in the week; or
 - (ii) is engaged in employment for not less than 30 hours in the week and has a spouse, civil union partner, or de facto partner at any time in the week; or
 - (iii) is a spouse, civil union partner, or de facto partner at any time in the week of another person who in the week is engaged in employment for not less than 30 hours; or
 - (iv) is engaged in employment in the week and is a spouse, civil union partner, or de facto partner at any time in the week of another person who in the week is engaged in employment, if the total employment in the week of the spouses, civil union partners, or de facto partners is not less than 30 hours:
- (b) for the purposes of paragraph (a), if a person performs employment in a pay period of longer than 1 week, the person is treated as performing the employment to a uniform daily extent throughout the period:
- (c) if a person described in paragraph (a) as being engaged in employment suffers an incapacity as described in paragraph (d), which has the consequence described in paragraph (e), paragraph (f) applies:
- (d) for the purposes of paragraph (c), the incapacity is an incapacity due to personal injury by accident as defined in section 2 of the Accident Compensation Act 1982 or section 3 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 29 of the Accident Insurance Act 1998 or section 26 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 for which 1 of the following has been, is being, or will be paid:
- (i) earnings related compensation as defined in section 2 of the Accident Compensation Act 1982:
 - (ii) vocational rehabilitation allowance payable under section 25 of the Accident Rehabilitation and Compensation Insurance Act 1992:
 - (iii) compensation for loss of earnings payable under any of sections 38, 39, and 43 of the Accident Rehabilitation and Compensation Insurance Act 1992:
 - (iv) compensation for loss of potential earning capacity payable under section 45 or 46 of the Accident Rehabilitation and Compensation Insurance Act 1992:
 - (v) weekly compensation payable under any of sections 58, 59, and 60 of the Accident Rehabilitation and Compensation Insurance Act 1992:
 - (vi) continued compensation payable under section 138 of the Accident Rehabilitation and Compensation Insurance Act 1992:
 - (vii) weekly compensation as defined in section 13 of the Accident Insurance Act 1998:
 - (viii) weekly compensation as defined in section 6 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- (e) for the purposes of paragraph (c), the consequence is that the person is unable to be engaged in any week in the employment or employments in which, but for the incapacity, they would, the Commissioner is satisfied, have been engaged in in the week for the number of hours specified in paragraph (a)(i) or (ii) or (iii) or to the extent of the engagement specified in paragraph (a)(iv):

(f) for the purposes of paragraph (c), the person is treated as having been engaged in the week in the employment or employments for the number of hours specified in paragraph (a)(i) or (ii) or (iii) or to the extent of the engagement specified in paragraph (a)(iv):

(g) if a person described in paragraph (a) as being engaged in employment is unable to be engaged in employment in the week because they are on a period of parental leave under the Parental Leave and Employment Protection Act 1987 for which a parental leave payment under Part 7A of the Act is payable, they are treated as having been engaged in the week in the employment for the number of hours in which, the Commissioner is satisfied, they would have been engaged but for the period of parental leave:

(h) is defined in section KC 3(3) (Transitional tax allowance) for the purposes of that section.

income-tested benefit —

- (a) Repealed.
- (b) Repealed.
- (c) does not include a supplement or benefit paid or payable under any of sections 61DB, 61DC, 61DD, 61DE, 61EA, 61G, and 69C of the Social Security Act 1964

principal caregiver, for a dependent child,—

- (a) means the person, whether or not a parent of the child, who, in the opinion of the Commissioner, has the primary responsibility for the day to day care of the child, other than on a temporary basis; and
- (ab) does not include a transitional resident or the spouse, civil union partner, or de facto partner of a transitional resident; and
- (b) does not include a body of persons, whether incorporated or unincorporated; and
- (c) does not include a person who is the proprietor of, or employed in,—
 - (i) a residence established under the Children, Young Persons, and Their Families Act 1989; or
 - (ii) a residential disability care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001; or
 - (iii) any other institution in which the child is being cared for

salary or wages—

- ... (b) includes—
- ... (xii) under the Accident Compensation Act 1982, payments of earnings related compensation, as defined in section 2, and of compensation under section 80(4), that are not payments on account made under section 88 in circumstances in which, at the time the payments on account are made, the nature of the compensation on account of which they are made has not been determined; and
- (xiii) under the Accident Rehabilitation and Compensation Insurance Act 1992, a vocational rehabilitation allowance payable under section 25, payments of compensation for loss of earnings payable under any of sections 38, 39, and 43, compensation for loss of potential earning capacity payable under

section 45 or 46, weekly compensation payable under any of sections 58, 59, and 60, and continued compensation payable under section 138; and

- (xiv) under the Accident Insurance Act 1998, payments made under it by an insurer, as defined in the Act, of weekly compensation, as defined in the Act; and
- (xv) under the Accident Insurance Act 1998, any other payments of compensation for loss of earnings or loss of potential earning capacity in so far as they relate to a work-related personal injury, as defined in the Act, made by an insurer under a policy of personal accident or sickness insurance to which section 188(1)(a) (as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) applies; and
- (xvi) under the Injury Prevention, Rehabilitation, and Compensation Act 2001, payments made under it by the Corporation, as defined in the Act, of weekly compensation, as defined in the Act;

specified payment means—

- (a) an **income-tested benefit**; or
- (b) a veteran's pension; or
- (c) New Zealand superannuation; or
- (d) a basic grant or an independent circumstances grant, made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or an enactment substituted for those sections; or
- (e) **compensation described in any of paragraph (b)(xii) to (xvi) of the definition of “salary or wages”**, if the compensation relates to a day forming part of a continuous period of eligibility for such compensation and the day falls after the earlier of—
 - (i) the day having the same date as the first day of the continuous period of eligibility for compensation and occurring in the third calendar month after that first day; and
 - (ii) the last day of the third calendar month after the first day of the continuous period of eligibility for compensation.

2 Social Security Act 1964

3 INTERPRETATION

income-tested benefit means any of the following benefits:

- (a) an unemployment benefit:
- (aa) a sickness benefit:
- (b) a domestic purposes benefit:
- (c) an emergency benefit:
- (d) an independent youth benefit:
- (e) an invalid's benefit:

- (f) New Zealand superannuation payable at the appropriate rate in clause 2 of Schedule 1 of the [New Zealand Superannuation and Retirement Income Act 2001] or a veterans' pensions payable—
 - (i) at the appropriate rate in clause 1 of Schedule 11 of the War Pensions Act 1954 if the pension is subject to abatement under section 74D of that Act; or
 - (ii) at the appropriate rate in clause 2 of Schedule 11 of the War Pensions Act 1954:
- (g) an orphan's benefit:
- (h) Repealed.
- (i) an unsupported child's benefit:
- (j) a widow's benefit: